

FILED - USDC -NH
2023 DEC 22 PM3:29

**U.S. DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

Matthew-Lane: Hassell,
Plaintiff

V.

Devin Aileen Kimbark
DOES 1 - X
Defendant/(s)

CIVIL ACTION NUMBER: 1:23-cv-472-JL-AJ

U.S. District Court
District of New Hampshire

RESPONSE TO MOTION FOR DISMISSAL WITH PREJUDICE

9 Pages

Matthew-Lane: Hassell, Agent
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22nd of December, 2023

Comes now, Matthew-Lane; Hassell (here and after, known as Matt and/or Plaintiff), a Propria Persona Sui Juris, who respectfully requests that this Honorable Court, honor the relief sought and states as follows;

I declare under penalty of perjury and pains this document/response is factual and truthful to the best of my abilities.

1. Point 1 of the overview in your MOTION Miss Kimbark is a duplicate recite of Cheryl Kimbarks MOTION and has already been answered not only by the multiple Superior/Supreme Court's rulings and decisions in my Motion(s) within the State Court but also in the original complaint and points and authorities section and in my response to your mother (Mrs. Kimbark) and will be further proven within this response. Therefore, it is a moot point and no further need to burden the Court and myself is appropriate in this point.

2. In point 2 of your Motion Miss Kimbark, it is alleged that the lawsuit documentation was left with your 16 year old brother, yet you provide no evidence of what you allege, just yet another claim, which now appears to be against the State Sheriff that served the lawsuit documentation. I did receive a document from the Rockingham County Sheriff's Department stating Mark Kimbark called them to complain about the same allegation.

Then again, you and Mr. Kimbark did prove service was made in accordance with N.H Rev. Stat. § 382-A:2-206.

3. Devin (and Mr. and Mrs. Kimbark) made a false claim in a police report to law Enforcement. Devin used that report to deprive me of equal rights to our child. The police report shows your allegations were false, so why do you keep clinging to them as if the outcome favored you. It showed you lied. I did nothing to keep you there. Your battery was dead. The report even says "Matthew subsequently assisted with Devin's departure from the scene, and was advised of the process of acquiring a court issued custody agreement at 35 Amherst Street District Court, to which he reported he would respond to at a later date." You, Devin, chose to ignore multiple ways of communicating. I phoned and I texted and I emailed you many times and you ignored me. You have done everything to keep me from our child and I had to seek other avenues. I had no other choice but to involve the courts.

As far as perjury, and who is committing it, look at how inaccurate her statements are. Many people mistake slander and libel, spoken and written defamations so we can overlook the 4th line when Devin claims "His Motions contain multiple slanderous things about myself and my family." And then she goes on and She says I make "threatening and vile statements," on line 6. In both those instances, Devin fails to actually make a claim as to what those claims or statements are. Oh, and she does not file this under penalty of perjury, so it is as untruthful as the police report. She makes allegations in court again and again, about my character without proof and doesn't even have the integrity to say these statements under oath. Her entire Motion should be stricken because all Devin's document is, is hearsay.

4. Again, why doesn't Devin make her statements under penalty of perjury? It has been over a year, during which time Devin could have said anything and everything, under penalty of perjury. Even in this case she has the opportunity to do so and still chooses just to libel me and defame my good character, without proof, without substance and without possibility of penalty.
5. In point 5 of your MOTION it states "Mr. Hassell believes that I am "keeping" our daughter from him and this is a false claim." If Devin is not keeping me from our daughter, why did she hire a lawyer to contest 50/50 custody? Why was it more than 4 months from the time she moved out until I got supervised visits? How exactly did the judge decide? There has been no evidence provided by Devin to any of her claims. None of Devin's claims were made under penalty of perjury. The lawyer Devin hired contested an evidentiary hearing three times. The Court made a decision in absentia. I was not there because I was sick and I got my paperwork

mixed up. So the court did not make a decision because Devin was a better parent, the court made the decision because I was not there. If false and unprovable claims is not libel and defamation of character, then why are they sufficient to decide child custody and visitation, which injured me?

Even in your parenting plan, which was (granted) ordered by the court, I should have increased time with our minor child. The only reason I do not, is you refuse to obey your own parenting plan, which is proof you are doing everything in your power to keep me from our child. Are you kidding? It was your plan and you don't even abide by it. Do you even see how you are acting? Is it so reprehensible to be wrong you cannot just stop these legal actions and grant me 50-50 custody? What about PH's baptism? You didn't keep me from visiting with her then? Do you live in reality, or do you just make things up as you go along? No wonder you don't put anything under penalty of perjury.

6. In point 6 of your MOTION Miss Kimbark you are once again showing your inconsistencies with your deceptive and manipulative claims. In the documents provided, it is claimed you have lived at your parents house with our child since her birth and is one of the factors for your change of venue, that was granted. PH, you and I lived together until she was 3 weeks old. You have lied about it so many times you may actually believe yourself.

In point 6 of your overview in your MOTION TO DISMISS and in your Historical Section A. 1. I must ask as you keep changing your story, were you visiting me or your parents? Were you living with me or your parents? Your claims have been false to the Courts since your first filings (multiple times in just this document) and that's a fact and is proven by your words, and by your pleadings and the police report you provided and will be furthered by the police body cam footage and that is why you have contested any form of evidentiary hearing. All you do is lie to the Courts and those lies will be proven. You do not act in good faith and are not a credible witness and do not act with our child's best benefit in mind.

Devin claims on the 12th of November, 2022 Matt would not allow "...a nursing mother, to leave his home..." Was it our home, Devin and my home? Why do you think Devin misrepresents it as "his home", implying it was only my home? With the way Devin acts, as if our child is in constant danger and all kinds of other misrepresentations, did Devin leave the child with me and pick up PH and then I refused to let them leave? Can Devin please re-read her lies in previous court pleadings, so at least she can tell the same lies? According to the police report, page 4 of 5, paragraph 4, line 4 the police wrote about Devin and I that day; "She stated that they have been arguing over money issues and over the fact that Matthew does not like her parents and that she feels he is very controlling." So were we arguing over my political views, as Devin claims here? Or is it money and her parents? Again, it seems Devin just cannot put anything under penalty of perjury and one does not know why.

7. Devin is again making a claim without proof. My work history shows I've always worked hard for what I have, including being co-owner to a construction company. That only ended when I would not go along with what I suspected was

co-owners hiring employees illegally and “washing” drug profits through the company. Devin still associates with those same people.

However, going back to my original point, the same cannot be said about Devin. Her mother and father and grandmother and grandfather, finance most of Devin’s life and have done so most of Devin’s life. Devin’s work history has been sporadic and her finances, well, let us just say the ledgers do not balance. Devin’s lifestyle can be seen as dishonest and also less than exemplary.

8. In point 8 of your MOTION Miss Kimbark you call my criminal background extensive. I am not on parole. I am not on probation. I have no foreseeable criminal charges pending. I have never been convicted and sentenced for any of those alleged arrests. I may even have been convicted but never ordered to any additional jail time, than the time served (2-3 days/ arrest weekend).
9. When the courts did not order you to “allow me to visit PH, for over 4 months, you told me “There is a restraining order in place, so until we have a defined time schedule, you don’t feel comfortable being the supervisor for my visitation time” and/or “you don’t feel comfortable creating a visitation time” and/or “you are not 100% sure what the stipulations of our restraining order is” and/or “you have full decision making.” I have also communicated/responded to you “From what my knowledge is the restraining order is for me not to enter where you are living not that I can’t have visitation time or that you have to over see that visitation unless you want to. We could of and can be working out our own time schedule until first appearance if you wanted to let me have time with Phoenix. I can meet you anywhere, anytime....”. There was no court order for me to pay. When there was, I appealed it to the best of my knowledge and ability. Eventually, the courts garnished my wages and you should be getting the \$1,000.00+ a month. So are you saying that you don’t get that? What are your expenses? What expenses does PH have? Isn’t that \$1,000.00+ a month enough for shoes and clothing and diapers and incidentals and manicure/ pedicure and gas for the car and Netflix?
10. You and your family do not have the right to invade my privacy with our daughter by recording us and when I record the same visits, call it illegal. I will remember this in 10 years. I will remember how you treat me and use our daughter to hurt me. Your stepfather doesn’t even allow me to use the bathroom when I visit PH. Do I need to ask the courts or will he ever be civilized? I am the father of your child... our child and you just love enforcing that I can’t use the bathroom. You know, that “good faith” all of you keep mentioning. When do I get to honestly see some of that in action? So when I say I feel very uncomfortable in your parent’s house, it is with cause and that justifies my own safety and security reasons for recording. Your exaggeration of that to representing that I fear for my life, is erroneous. I don’t recall every saying that, but it is a hostile and threatening environment. You may not know, but when I did not record, Mr. Kimbark insulted me and just did everything to make me feel less than welcome. I don’t even want to be there. I want to bring our daughter to my place and the park and spend time with her. You and your family keep lying about me in court and to the police and

as soon as I can put all that into evidence, maybe you will see how horrible you really treat me.

11. Point 11 of your MOTION claims BELL vs HOOD is not applicable to your family as no one was arrested and no items were searched and seized from my home..... The fact is Miss Kimbark, our child has been seized from me and this was done without due process of law and without a valid warrant or at least without an affidavit in support of such which resulted in a significant deprivation of my rights. *Hamer v. Bieber*, 271 Mo. 326, 197 S.W. 68, 70 (1917). Unlawful detention or deprivation of liberty is the basis of an action for the tort of false imprisonment. Actual seizure or the laying on of hands is not necessary to constitute an unlawful detention. Also see *Knickerbocker Steamboat Co. v. Cusack*, 172 Fed. 358, 360-61 (1905).
12. You are right. Being upset is not sufficient to file a lawsuit. When the family court judges denied me due process and then later denied me equal protection of the law, as I state in my original "complaint," and have proven, is actually be the reason I filed suit against all of you, that is sufficient. As for you specifically, just reread you're motion to dismiss and the police narrative report and your filings and count the number of times you have made inconsistent and made false statements which has led to the deprivation of rights and deprivation of equal time with our daughter and has injured me. Like the original "complaint" states, that is the reason I am suing you. What you are doing to me is unforgivable. Not only are you harming me, but you are also depriving a loving daughter of her father. You are injuring her too. How many deadbeat fathers do you have to hear about, before you see it is mother's like you who create them? Why should I have to ask the courts for anything? She is our daughter, not your Barbie Doll, that you can take home whenever you want. She is a person.
13. This is the controversy; it was you and your family writing false reports on me which influenced the courts to keep our daughter away from me. That is called libel. That is why I am litigating against you and your family. Where in my paperwork does it say anything like what you say it says? All 6 parties are tied together and there are issues unique to you and your family and issues, which are specific to the tort against the judges.
14. Point 14 of your MOTION Miss Kimbark, states Title 5 Section 552H (b), has no application. I contend it does. I included the exact section I was referring to, in case I miss-cited the law. 5 U.S.C.A. 552 B (h): *Cited below. It is federal law, which supports my claim for this lawsuit. In the State Court Judge Michael L. Alfano and Judge Kerry P. Steckowych recused themselves from the case. Miss Kimbark, you were personally in the Courtroom in the hearing held on the 17th of July, 2023 when Judge Kerry P. Steckowych stated "I have convinced him he could no longer be involved with this matter and the hearing was over" and you and your family are a witness to such a statement. He recused himself and then came back. There must be some legal reasoning behind that. In any event, this is exactly what the controversy is going to decide.

15. Point 15 of your MOTION Miss Kimbark, are you claiming your mother (Cheryl Kimbark) did not call the police as Mark Kimbark drove over to our place? Are you claiming that the "police findings" as you call it is not a report? Did you read the findings? Page 2 under Narrative: states "The following "report" is a synopsis of this incident as it was presented to me by the involved parties and is intended to summarize the content that was discussed. The sequence of the information is not necessarily in the order in which it took place nor is it the exact wording that was used during the interview. For an exact account please reference the associated video for this case. Even the law enforcement paperwork says this is a "report" not "police findings" as you state. Furthermore, again as what is advised by the law enforcement, the associated video for this case will need to be examined for an exact account, which shall be subpoenaed and which will provide the jury with truth in evidence.

To add to this in your Historical Section B. 2. You once again libel me stating "Manchester Police attempted once again to recover necessary items (clothes, shoes, baby items) from Mr. Hassell, he refused, even after receiving a personal call from an Officer. Can you provide any evidence that I refused this attempt? The telephone recording from the Officer? Any factual and proveable evidence at all, for any claim you libel me with? Your hearsay accusations are exactly that, "HEARSAY" (Fed. R. Evid. VIII. HEARSAY). You have on multiple occasions proven to either lie and/or are inconsistent in your statements and provide nothing but false and/or red herring fallacy claims and allegations, you are not a credible witness and neither is your family.

16. In point 16 of your MOTION Miss Kimbark Are you saying the judges have had ex-parte communications and that has been undisclosed and is being used as evidence against me? Or are you saying that by the narrative reports given by the judges (you already have copies of these reports) the evidence given is, the libel and slanderous and deformation of my character and of my good name statements you made in Court?

Such claims and allegations as, I'm a drug dealer and drug user and a alcohol abuser and that I have no family in the State of New Hampshire and that you believe I fled the State of Texas to avoid criminal charges and that if I had unsupervised custody of our child you fear I will abscond with our child and/or continues to be a flight risk?

Again, Miss Kimbark, you have not presented "evidence" of any of these libelous and slanderous claims and allegations, which were entered into the Court record and that is why you fear and have contested every evidentiary hearing (due process of law) by and through your attorney. All you can do is once again show your inconsistencies/false claims and libel me with false claims of mental instability and knowingly and willingly and intentionally misrepresent facts. Also see Article 15 Rights of Accused of the New Hampshire Constitution. If you would not continue to libel and defame me, that would in fact have a final impact on how the courts did and would and will decide. Your repeated false accusations have injured me and of course, kept me from our child without proof.

17. Point 17 of your MOTION, your statement Miss Kimbark is further proof of your false claims and misrepresentations. First, it is not 'your home,' it is your mother and step-fathers home. Then, let it be known, you never "feared" being alone with me until you abandoned our family unit on the 12th of November, 2022. That sounds awfully convenient that I "all of a sudden became violent".

Finally, Make it make sense, you give one instance that I refused a visit with PH. I have been in court against you for a year to get fair and equal access to our child. So, which one is right? I make excuses so I don't see PH or you are using our daughter as a weapon and lying to get your way, manipulating the court, using libel and defamation of my character as tools of your trade. There should be a set 50/50 custody schedule and it is my natural right and unalienable right.

18. Point 18 of Miss Kimbark's MOTION she claims some wild issues, again without evidence. I have stated multiple times I will seek any and all legal and lawful remedies until I get 50-50 custody. It's my right.

19. Point 20 of your MOTION Miss Kimbark, if you want to prove our daughter is not a trophy to be won, then stop using her as one and allow 50/50 custodial time and equal and fair decision making. Just you and I and not what your family is urging you to do and financing for you.

Perhaps you are too emotionally immature to realize how hurtful, malicious and venomous your lies are, but in 40 years, PH will have to decide which of our houses to have Thanksgiving dinner at. We will both still be part of her life and you will have to deal with me that long. I don't see it as frivolous. I see it as my duty, which I agreed to a long time ago. My duty is to raise our daughter. That is not saying it is not your duty as well, but rather enforcing I will be there. So the question is, why do you and your family have to lie? You haven't proven a single claim against me and yet you and each of you continue to make them.

You mention I 'argue and mock the courts.' How do I do that? Why don't you give examples? Is it that I wanted both of us taking drug tests and when the judge ordered only I do, I objected? Let's not misrepresent the truth, I did not object to drug testing, we both know I don't use drugs. I objected to you not being drug tested as well, then I mocked the judge for not being fair and showing prejudice. I demanded both of us do drug testing. Why did your attorney object to that? What do you have to hide? Then let's do it tomorrow. Drug and alcohol testing. You don't want PH raised by a drug addict or an alcoholic do you?

20. Pages 4 - 9 appear to be duplicate copies of Mark Edward Kimbarks and Cheryl L. Kimbarks MOTION TO DISMISS misrepresentation of facts (notably your Historical Section 2. B. and C. 1.) also most has been responded to in the response to Cheryl L. Kimbark and will further be proven to the JURY. Therefore there is no need to burden the court or myself with frivolous duplicate answers and paperwork. This is now for a Jury to hear and decide.

21. I ask the court to use Title 18 U.S.C. Section 3571 as a guideline for setting damages. I believe I have been libeled and defamed and that has caused me emotional stress and injuries, for which I seek damages. I believe due to the

severity of the injury the libel and defamation has caused a \$100,000.00 award is appropriate. I may not have been totally clear, I use the U.S.C. as a justification for my request. I do not think the injury you caused amounts to felonious abuse, so \$250,000.00 is too much and I have certainly been injured more than a small claims amount, so I think the misdemeanor amount of \$10,000.00 is too small. Perhaps that clears up the issue for all involved. I didn't pick the dollar amount I seek out of a hat, so too speak, I used law to justify it.

WHEREFORE, Petitioner, Matthew-Lane: Hassell, a Propria Persona Sui Juris, respectfully demand and instruct that this Honorable Court Honor and Order the following relief:

A. That this honorable court deny each and every MOTION TO DISMISS filed by the defendant's; Miss Devin Aileen Kimbark Et al and Mrs. Cheryl Kimbark Et al and Mr. Mark Kimbark Et al and the 3 Judges, WITH PREJUDICE based on the papers and pleadings on file. None of the Defendants filed under penalty of perjury and it is true that none is to be believed, unless sworn. To my knowledge, it does not pertain to if one subscribes after being duly sworn or affirms and attests, as much as it does pertain to and is relevant to being witnessed under penalty of perjury. There is cause to proceed.

B. That this honorable court grant temporary relief of unsupervised visitation with the minor child each weekend until these matters can be resolved fully from Friday evening at 6:00 P.M. until Sunday evening at 6:00 P.M;

C. That this honorable court reduce child support payments to \$200.00 per month until such time as the court can reach a final decision on the issues presented in the papers and pleadings on file. If Mr. Hassell should lose this tort, all such payments be totaled any under payments be set to judgment as arrears;

a. The reason for this request is the amount of child support orders is at the maximum amount allowed by law and is causing Mr. Hassell financial hardship while the mother Devin Kimbark has not provided credible proof of financial expenses to substantiate the award. She resides with her parents and has not proven expenses.

D. That any future filings which Defendant(s) make, which are not under penalty of perjury be stricken from the record by this honorable court; Deny Defendants the requested additional 60 days to provide an official 'Answer to Claims', and since Defendant has failed to act with honor and good faith, no good faith offer from Plaintiff is awarded and/or offered to defendant respecting N.H. Rules of Civil Procedure 1, which authorizes a need for speedy resolution;

a. It was decided in Group v. Finletter, 108 F. Supp. 327 (1952). Defendant has filed no counter affidavit, and therefore for the purposes of the motion before the Court, the allegations in the affidavit of plaintiff must be considered as true, Federal Rules of Civil Procedure, Rule 9(d), 28 U.S.C.A. While this Court recognizes that to be sound law, it is also the law that where it

is undisputed that a plaintiff's legal rights are being violated, there is no longer any occasion for the requirement that plaintiff exhaust whatever administrative remedies he may have before seeking to vindicate his rights in Court. *Wettre v. Hague*, 1 Cir., 168 F.2d 825, 826. See also *Reynolds v. Lovett*, D.C. Cir., 201 F.2d 181.

b. Since each of the Judges (civil officers) was represented by counsel, and they did not affirm and attest and were not subscribed and sworn, in either case, under penalty of perjury, their MOTION TO DISMISS must be denied. In accordance with *Trinsey vs. Frank J. Pagliaro and Albert Foreman* 229 F. Supp. 647 (1964). 1. "Statements of counsel in brief or argument are not facts before the court and are therefore insufficient for a motion to dismiss or for summary judgment." 3. "Where there are no depositions, admissions or affidavits the court has no facts to rely on for a summary determination." District Court, W.D. Washington, Southern Division.

c. Therefore I respectfully demand that this case continue. It is my wish.

E. Order any future filings which the defendant(s) makes, which are not under penalty of perjury be stricken from the record by this honorable Court;

F. Honor any such further relief(s) as justice may require.

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VOID WHERE PROHIBITED BY LAW

Matthew-Lane Hassell

Matthew-Lane: Hassell authorized agent of
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Date: 22nd of December, 2023

County of Hillsborough, ss.
State of New Hampshire

On this 22nd day of December, 2023

Matthew Hassell
know to me or proven to be the instrument subscriber
personally appeared before me and acknowledged
that he/she executed the foregoing instrument.

[Signature], Notary Public

Platsky v. C.I.A. United States Court of Appeals, Second Circuit Nov 24, 1991, 1953 F.2d 26 (2d Cir. 1991). Reversing district court for dismissing pro se complaint for lack of standing without explaining formalities of pleading and affording pro se plaintiff an opportunity to replead.

I certify that a copy of the above mentioned motion has been hand delivered and/or sent by USPS mail to DEVIN AILEEN KIMBARK.

